



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, State Controller
Marilyn Howard, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

FINAL MINUTES REGULAR LAND BOARD MEETING June 15, 1999 9:00 AM

The regular meeting of the Idaho State Board of Land Commissioners was held on June 15, 1999 in Boise, Idaho. The Honorable Secretary of State Pete T. Cenarrusa presided. The following members were present:

Honorable Attorney General Alan G. Lance
Honorable State Controller J. D. Williams
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Stanley F. Hamilton

The Honorable Governor Dirk Kempthorne was absent from the meeting. He was attending the Western Governors' Association meeting in Jackson, Wyoming.

• **CONSENT AGENDA**

Director Hamilton provided background information on the consent agenda items. He informed the board of an additional timber sale on agenda item #2. The sale is Wolf Lodge – a sale previously approved by the Land Board. It was discovered that there was substantial increase in Douglas-Fir Bark Beetle and other insect activity. The department is requesting permission to revamp this sale to deal with the perishable timber. The volume of this sale will increase about 300,000 board feet. The value will drop a little. There may be some areas of clear cuts in this sale area. The department is recommending a one-week advertising period for distressed timber. Director Hamilton requested that this be included on this agenda. There were no objections.

Director Hamilton requested that agenda item #4 be withdrawn from consideration. Legal counsel is still working with Department of Administration counsel to develop a lease format that will service other future activities as well as this one. There were no objections.

❑ **The following official transactions were approved:**

- Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site, Miscellaneous and Submerged Land Leases for April 1999
- Bureau of Minerals for April 1999
- Bureau of Real Estate, Easement Section for April 1999
- Bureau of Real Estate, Land Sale Section for April 1999
- Bureau of Range Management and Surface Leasing for Cropland, Grazing, Cottage Site, Miscellaneous and Submerged Land Leases for May 1999

❑ **The following timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management were approved as amended:**

• CR-1-0288	Pine Rock	1,180 MBF
• CR-1-0302	Sandhill	2,500 MBF
• CR-2-0199	Steep Creek	5,315 MBF
• CR-3-0449	Linfor Hill	3,950 MBF
• CR-4-0666	Meadow Creek	3,665 MBF

❑ **The following additions to qualified bidders list, timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management, were approved:**

- Steven M. Weill, dba Steve Weill Logging, 1220 F.S. Road 630, Cocolalla, ID 83813
- Wayne Babb, Pride Logging LLC, 12120 E. Wedgewood Ct., Spokane, WA 99217

❑ **Proposed lease at 590 West Washington with Health & Welfare, Emergency Medical Services, staffed by Alvin Carr, Leasing Specialist - WITHDRAWN**

Superintendent of Public Instruction Marilyn Howard made the motion to approve the Consent Agenda with an amendment made to agenda item #2 and agenda item #4 being withdrawn. Attorney General Lance seconded the motion. The motion carried on a vote of 4-0 with Governor Kempthorne being absent.

• **REGULAR AGENDA**

Director's Report, presented by Stanley F. Hamilton, Director, Department of Lands

Director Hamilton provided the Land Board with current operational information from the Department. He provided the current Principal Fund Balances and informed the Land Board that there had been a 1.7 million-dollar correction in the Endowment Fund in May. This is a standard operation.

• **Information provided:**

- Chart showing principal fund growth
- Permanent endowment contribution by beneficiary FY 1994 – FY 1998
- Charts showing permanent endowment total, permanent endowment public school
- Income contributions by funds FY 1990 – FY 1999 year-to-date
- Charts showing total beneficiary income, total public school income
- Endowment expense and revenue by program and fund

❑ **Request to change application deadline for 95-96 reopened leases, presented by Bryce Taylor, Bureau Chief, Range Management/Surface Leasing**

Mr. Bryce Taylor provided the Land Board with background information. At the May Land Board meeting, the Board approved a deadline of June 30, 1999 to submit an application for the 1995 and 1996 grazing leases that were invalidated by the Idaho Supreme Court in April. Due to concern over the implications of the court decision on Idaho Code 58-310, the department has initiated a request for an Attorney General's opinion to clarify the issue.

The department recommended that the June 30, 1999 application deadline previously approved by the Board for the cancelled 1995 and 1996 grazing leases be held in abeyance pending the preparation of an Attorney General's opinion concerning the effect of the Supreme Court decision on Idaho Code § 58-310.

Attorney General Lance moved to approve the recommendation of the department. State Controller Williams seconded the motion. The motion carried on a vote of 4-0 with Governor Kempthorne being absent.

❑ **Coeur d'Alene IDL Office Surplus Property – Request to dispose old office site in Coeur d'Alene. The sale property consists of two (2) office buildings on 0.58 acre in Kootenai County - Presented by Don McNarie, Real Estate Specialist**

Mr. Don McNarie provided background information. This is a tract of land located in the city of Coeur d'Alene in Kootenai County that has been declared surplus and is to be offered for sale by the Idaho Department of Lands (IDL).

The Idaho Department of Lands has built a new office building on Industrial Avenue north of Coeur d'Alene on property they have owned since 1972 and where two (2) other IDL offices are located.

North Idaho College has long expressed an interest in purchasing the property.

The department recommended that a public hearing be advertised for four (4) consecutive weeks in Kootenai County. The public hearing would be held in Coeur d'Alene to allow the property to be sold directly to North Idaho College for \$270,000, with a 30% down payment. The remainder of the principal would be paid through annual payments. If said direct sale fails to be completed, the Idaho Department of Lands can proceed to sell the property at public auction for \$270,000 cash on the day of sale.

After considerable discussion by the Land Board, State Controller Williams moved to accept the recommendation of the department. Superintendent of Public Instruction Marilyn Howard seconded the motion. The motion carried on a vote of 3-1. State Controller Williams, Superintendent Howard and Secretary of State Cenarrusa voted aye. Attorney General Lance voted nay. Governor Kempthorne was absent.

❑ **Department of Labor Surplus Property – Request approval to dispose office site in Moscow currently owned by Idaho Department of Labor. The surplus property consists of office buildings on 0.24 acre in Latah County - Presented by Don McNarie, Real Estate Specialist**

This is a tract of land located in the city of Moscow in Latah County. The land has been declared surplus and is to be offered for sale by the Idaho Department of Labor (IDOL).

Mr. McNarie stated the tract of land was purchased in 1957 by IDOL for the Job Service office in Latah County. The Job Service has outgrown the building and will be moving to a new location in fall 1999. The city of Moscow, the adjacent landowner, has expressed interest in purchasing the property. The department recommended that a public hearing be advertised for four (4) consecutive weeks in Latah County. The public hearing would be held in Moscow to allow the property to be sold directly to the city of Moscow. If said direct sale fails to be completed, Department of Lands staff will assist the Idaho Department of Labor in selling the property at public auction for \$246,000 and cash on the day of sale.

A motion was made by State Controller Williams to approve the recommendation of the department. Attorney General Lance seconded the motion. The motion carried on a vote of 4-0 with Governor Kempthorne being absent.

❑ **Camp Howard/State of Idaho Land Exchange – Request for final approval to complete land exchange between the state of Idaho and P & H Land Company, Inc. - Presented by Perry A. Whittaker, Chief, Bureau of Real Estate**

Mr. Perry Whittaker provided background information. This is a request for final approval for the Camp Howard Ridge land exchange between the state and P and H Land Company.

The exchange lies within the Clearwater Supervisory Area. The private property is located approximately four (4) air miles west of White Bird and about nineteen (19) air miles southwest of Grangeville, ID.

Long term revenue will increase because of the acquisition of an additional 535 acres of commercial timberland. The additional forestland is estimated to grow approximately 107 MBF per year more than the potential for the state land. State ownership boundary will be reduced by six (6) miles which will decrease survey and administration costs over the long term.

Six (6) of the ten (10) state parcels have no legal access. Physical access to the state land is poor. The private land to be acquired has both legal access as well as good physical access.

The existing trespass of Lewis Crea's house on state land in Section 33, Township 33 North, Range 5 East will be resolved by inclusion of a 1.68 acre parcel.

Eight (8) grazing leases will be disposed of for one (1) new lease, thereby reducing administrative costs.

Acquisition of the private land will make it desirable to acquire approximately 960 acres of Bureau of Land Management land, which adjoins the block. Approximately one-half (1/2) of the land is timberland with the remainder being rangeland.

Department staff recommended Land Board approval to complete this exchange.

State Controller Williams asked for additional information regarding P and H Land Company. Mr. Whittaker stated that it was a partnership between Lee Potter and Arlie Hayner who are property owners in the Grangeville area. He said the exchange appears to be a good deal for the department. P and H Land Company is in the property management business.

State Controller Williams stated he would like to hold this agenda item for one month – to be brought back to the Land Board meeting in July. There were no objections from the Land Board and this issue will be on the agenda at the July 13, 1999 regular Land Board meeting.

• **MISCELLANEOUS AGENDA ITEMS**

Secretary of State Cenarrusa stated he made a trip to Clear Creek and he felt a fine job had been done there. The road was in and graveled. He stated that Heidi Baldwin had planted 3,000 trees – seedlings and larger trees (quaking aspen, evergreens, etc.) The bridge is in the process of being installed. While at Clear Creek, Secretary of State Cenarrusa looked at the two (2) state plots and commented that the plots are “excellent.” He said the Board needs to wait a while and pick the time to market the lots. They are extremely valuable.

Secretary of State Cenarrusa stated that he was concerned about the WestRock issue. He asked if there was a date held for WestRock. Director Hamilton stated that the WestRock meeting had been canceled. Secretary of State Cenarrusa said he understood there was no August Land Board meeting. Director Hamilton stated that it was not possible to get all Land Board members together for a meeting. Secretary of State Cenarrusa asked about the July meeting. Director Hamilton stated that the July meeting would be held in Montpelier, ID.

Secretary of State Cenarrusa commented on the over seven-year delay for the Clear Creek project. He wondered if WestRock would follow along the same steps. It was his understanding that Planning and

Zoning had done their job.

Director Hamilton stated Planning and Zoning had done the job to the extent that they and the County Commissioners had granted conceptual approval. He said it was his understanding at their last meeting, the Planning and Zoning Commission decided to table the question of a Conditional Use Permit request. The Commission indicated they needed some kind of feedback from the Land Board before they would proceed.

Director Hamilton said he felt the County Commissioners are very interested in what the Land Board wants to do. The meeting that had been scheduled for July 6 would have had the three County Commissioners come in and visit with the Board.

Secretary of State Cenarrusa said as far as he was concerned about meeting dates, he would be willing to meet in the evening or another date to speed things up.

State Controller Williams said the department is currently reviewing all of the materials that WestRock has presented. Director Hamilton said the department is looking at all of the available material – old ValBois information, completed EIS work, information WestRock has provided the department, etc. The department is talking with other state agencies that have involvement.

Director Hamilton stated that he thought the Forest Service is about to indicate a requirement for EISs for activities on state and private lands. There are some easements across state and private lands that go on to Forest Service land – even though it is an easement they have requested.

Director Hamilton said when the department is done researching the information, it will be compiled and the department will provide a briefing to the Land Board. Director Hamilton stated it was the initial thinking that the briefing should be the responsibility of the company and that they should bring in a consultant. Director Hamilton stated that the sense of the Board was that they wanted IDL staff and other agency staff to do much of this work.

Director Hamilton stated that he did not have a timetable when this would all be completed. He stated he was reluctant to have the department go very far into this because the Land Board has never provided the department with conceptual approval to go ahead with the project. He stated he was trying to balance the expenditure of state funds, research and investigation work with where he thinks the board is in terms of interest in the project.

State Controller Williams stated he would be interested in the analysis already completed by the Forest Service. Director Hamilton stated the Forest Service had basically completed an EIS – it may have been in preliminary form, but they had done a tremendous amount of work. He said the department could get all of this information.

State Controller Williams stated he would also like a thorough analysis of the financial aspect of the project – backing and timetables for development. He would like to see a review of the mitigation as proposed – the structuring of the mitigation and how it is to be paid. He stated WestRock had been in his office and had talked about performance bonding – payment bonding.

State Controller Williams commented that there is a lot of timber on this site. Director Hamilton stated the last time timber was harvested formally was at a timber sale in the early 1980s. Director Hamilton stated this was not a clear-cut type of sale.

State Controller Williams stated it looks like part of the land is in Adams County. He asked if Adams County would be affected by the project. Director Hamilton responded that Adams County may be affected at some future time but not at this time.

Secretary of State Cenarrusa asked if any endowments would be affected. Mr. Bryce Taylor answered that there is one section of Public School and the remainder is Hospital South.

Secretary of State Cenarrusa observed there is so much to be done. He stated the responsibility of the Land Board is to maximize income. He asked if we need to jump through all of these phases in order to get at what that charge. He asked if WestRock was going to be held up like the board was with Sun Valley.

Attorney General Lance said he felt this relates to how it will be leased to WestRock. An annualized lease payment is pretty easy. If we are talking about a percentage of the take – we need to know who our partners are and how solvent they are.

State Controller Williams said his concern is that everything is done correctly. He stated he has had good answers to all the questions he has asked WestRock. We need to make sure we ask the right questions. Ski resorts notoriously do not do well. There are a lot of bankruptcies. Once this area is developed, it will not be available for future generations to develop. The impact on the reservoir could be profound. There could be transportation issues. These are not direct impacts on the endowment, but they are practical considerations.

Secretary of State Cenarrusa said his concern is “when are we going to start on this to get all the answers and get on the way.” Director Hamilton said department staff is working to pull this information from whatever sources they can find.

Director Hamilton said the Land Board needs to provide the department with guidance as to when they are ready to hear this information. He stated he felt the information would be ready by the September meeting.

Attorney General Lance asked why the July Meeting was being held in Montpelier, ID. State Controller Williams said the new Oregon Trail Interpretive Center will be dedicated that day. There will be a wagon train going through the town. Governor Kempthorne will be participating in the opening. State Controller Williams said there would be an award given for stewardship for grazing resources given at that meeting.

• **INFORMATION AGENDA**

Director Hamilton provided information on the information agenda. No action is taken on information items.

Timber sale activity report

Interest rate update

Triumph Mine Update

Correspondence received from Priest Lake cottage site lessees

Secretary of State Cenarrusa stated he had a letter from Chuck Lempesis, Legal Counsel for the Priest Lake Lessees Association asking how the department is planning to proceed on letters of appeal from Priest Lake lessees.

Director Hamilton informed the Land Board of the procedures that would be followed by the department.

Mr. Lempesis was available at the meeting and asked to come forward to discuss this issue. He stated that a significant number of appeals had been filed. Mr. Lempesis stated that his instructions were to cooperate with the Land Board and the department.

Mr. Lempesis stated he wanted his folks to be able to come in and meet with the Department of Lands if they chose to do so – personally appear and provide evidence across the table or appeal to this board and present evidence that would create a record. He stated he felt this was fundamental fairness. He said at no time in any of the correspondence with the department has anyone yet provided him with anything more than what everyone knew on December 15, 1998. He stated that it was his understanding it would be

refined, put in the form of a written document and then the process would go forward.

Mr. Lempesis said he was concerned. He stated the lessees did not mind losing or being denied but would like the opportunity to be heard and to know how they could be heard.

Mr. Lempesis again thanked the board for their patience and courtesy on the issue. He stated this is a very important issue to his folks. Secretary of State Cenarrusa said he had been getting a lot of mail. Mr. Lempesis stressed it is not intended to be junk mail. The lessees want to make a record and they want to be heard.

State Controller Williams asked Mr. Lempesis if he had any problem with the timetable that was defined by Mr. Taylor earlier. Mr. Lempesis said he did have a problem with it. He stated the notices went out and most of his folks received them the first part of May. The lessees have filed a timely eight-page appeal. The lessees have requested additional information from the department, such as how the appraisal occurred and upon what the appraisal was based. The department included several items – one item contained documents for the record pertaining to the appraisal process and the association's view. Most importantly each lessee included comments relative to their particular site. Most of the information can be provided. However, since they want to submit an appraisal, it cannot be done in the timeframe.

State Controller Williams said he envisioned having all the information in or just the appealed notice in. Then there would be time to augment the record before the hearing.

Mr. Lempesis stated specifically what the Board approved on December 15 says nothing about “if you do not have it in with your notice on such and such a day.” The record has not even been created for the appeal so how could it all be in?

State Controller Williams asked Mr. Taylor when the department will be doing the hearings. Mr. Taylor informed the board the appeals process adopted does not set forth a procedure for a hearing. It does set forth an appeal filed by the lessee by the fourth Monday in June. That appeal is then reviewed by two department appraisers and one department individual familiar with the area.

There is no provision within that appeal process for informal hearings that Mr. Lempesis is now promoting. He stated he was not aware of any discussion regarding the hearings at the subcommittee meetings. He said this would be subject to department review and then a response to the appellant. If the appellants are still aggrieved at that point, they have the opportunity to appeal to the Board. An actual hearing was not part of what was approved. The Board could make a decision for this to be done.

State Controller Williams said the Board had been in this for a long time and it needs to “bite the bullet once.” The lessees need an opportunity to present anything they want to present at least once. They need to be treated fairly whether that is through a hearing before the Department or the Board. If there are a substantial number to be heard, there will probably have to be a hearing officer. Lessees need a reasonable amount of time to have an appraisal done.

Attorney General Lance said he felt the Board was inviting misunderstanding if you do not allow lessees to express their concerns and to question the values that may be in the appraisal.

Attorney General Lance said there is a suggested cut-off date for filing the notice of intent to appeal. Then there is a subsequent cut-off date for documentation, witnesses and other things that procedurally we may choose to oppose. Next is a hearing process if they choose to go through that. Then if they choose to appeal from that hearing process, the Board would commence to define issues.

Attorney General Lance stated he did receive the correspondence from Mr. Lempesis stating he did not have his mail answered. He asked for Director Hamilton's response.

Director Hamilton said it was his understanding the Department was answering the mail as it came in. He stated there was a letter received a week or so ago that has not been responded to. He stated sometimes

letters were sent to the Land Board and not to the Department. Without copies, the Department cannot respond. The Department has responded to many letters that came directly to the Department. These letters may not contain the information Mr. Lempesis wants, but it is not because the Department did not respond.

State Controller Williams suggested that the fourth Monday in June will be the deadline for filing appeals. Sixty days from that day would be the deadline for providing any information the lessees want presented in the file. The Department would establish some type of hearing procedure in the area as soon as practical thereafter. That hearing would be for any type of evidence the lessee wanted to present. Then the Department would bring the recommendations to the Board within a reasonable time, with the understanding of having this full, open hearing on site. Any appeals to the Board would be on a limited basis. Then the Board would make the final decision and it would be to appeal on the record to the court system.

Mr. Lempesis stated that this sounded fair. Director Hamilton questioned the sixty (60) day deadline. Would this be sufficient time for the lessees? Attorney General Lance said the deadline did not have to be the same for all lessees. There should be some flexibility in terms of setting a hearing date after the appeal notice has been filed.

Mr. Lempesis said he would file a consolidated notice of appeal with the department. He hoped this would allow him to consolidate a lot of these appeals in order to expedite the process. If individuals chose to augment this more than they have, they could be heard. State Controller Williams said this would create a better record.

State Controller Williams asked when the deadline was for sending out notices for the year 2000 rent. Mr. Taylor stated that the notices were sent out by the first of May. State Controller Williams asked if there were any timelines that could cause concern. Mr. Taylor said there were other goals but the Department has time to work with those. He said the Board directed that the Department write a new lease for each and every one of the cottage site lessees that sets forth some of these new processes and procedures and establishes a ten (10) year contract for rental at 2½% times the assessed valuation. This needs to be completed so leases can be mailed by the middle of November in order to make it effective.

January 1, 2000. It has been guaranteed to both Priest Lake and Payette Lake that they would participate in the process.

Mr. Taylor stated one of Mr. Lempesis' concerns, which he expressed in writing, is that the Department is going to send that to him on November 1 and there will not be adequate time to respond. That is not the case. The Department is preparing a working draft that will be provided to him in time to work on the final draft. That is separate from the rental picture.

Director Hamilton stated those who elect to have an appraisal done may have it done in thirty (30) days but it may take as long as ninety (90) days. He suggested if they were going to hire an appraiser, the Department needs to be notified. Then the Department can accommodate the request.

State Controller Williams suggested the Board consider the following: The Board set a deadline for any augmentation – September 1, 1999, unless good cause is shown because of delays in appraisals and then a reasonable time would be set. He suggested an additional thirty (30) days.

Attorney General Lance suggested a hearing date be established. He suggested fifteen (15) or thirty (30) days before the hearing date the lessees need to have all of the information gathered. His suggestion was to base it on a case-by-case basis.

Chief Deputy Secretary of State Ben Yursa expressed concern about any motions being made on this issue at this meeting. This issue was not properly noticed. It was not on the agenda.

Attorney General Lance suggested that prior to the July 13, 1999 Land Board meeting in Montpelier the Department show the Board the proposed draft regarding the procedure to handle the issue. He suggested that this be on the July agenda to approve the procedure as drafted. This would give Mr. Lempesis an

opportunity to review the draft and to be present to make any objections.

There was no objection to this request. Attorney General Lance asked Director Hamilton to provide him with a computer printout of all contracts showing balances due and interest, including the last payment. Director Hamilton said this would be provided to the Attorney General.

There being no further business to come before the Board, the meeting was adjourned.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne
President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Pete T. Cenarrusa
Pete T. Cenarrusa
Secretary of State

/s/ Stanley F. Hamilton
Stanley F. Hamilton
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the September 14, 1999 regular Land Board meeting.